

A Review of Federal and State Consumer Rights

The following is short review of relevant Federal and State rights that protect consumers in disability services. It is a summary of all places in law where client rights are protected, including information regarding the specifics in statute and rules on investigations, due process and appeals around rights violations for all consumers and how consumers are informed of these processes. This information is neither an official list nor meant to be exhaustive.

CLIENT RIGHTS

July 13, 2006

Quick Summary

- I. Rights arise under U.S. Constitution (due process, in particular), Medicaid law (with specific notice and appeal provisions), State law (client rights provisions and appeal of State agency administrative decisions), and State rules (client rights passed by the Commission). Not every right is personally enforceable in court (e.g. HIPAA confidentiality).
- II. Enforcement of one's rights is usually done in court; this could be Federal or state court. In North Carolina, if the alleged violation of one's rights is due to the decision of a state agency, then usually one must use the administrative procedure through the Office of Administrative Hearings (Chapter 150B). That involves a hearing and a decision by an administrative law judge which is reviewed by the agency. The agency issues the final decision and that is reviewable in court.

Sources of Rights and Enforcement

I. US constitution - many rights - most relevant to client rights -

A. due process requires -

1. persons confined to state facilities have right to reasonable safety, freedom from undue restraint, and minimally adequate treatment in accordance with professional judgment (Youngberg case)
2. cannot deny or terminate an entitlement without hearing

B. equal protection requires -

different treatment of persons must be based on rational basis related to a legitimate government purpose; if the different treatment is based on a suspect class@ like race or national origin or fundamental right, then the courts will uphold only if there is a compelling state interest

II. Federal Statutes (there are Federal regulations related to most of these)

A. Civil Rights Act - 42 U.S.C. ' 2000a et seq.

prohibits discrimination in public accommodations, employment, and public programs on the basis of race, color, religion, or national origin

B. 42 U.S.C. ' 1983

no person under color of state law shall deprive another of the rights, privileges, or immunities secured by the US constitution and laws

C. Rehabilitation Act of 1973 - 29 U.S.C. ' 701 et seq.

no discrimination against qualified individuals with disabilities in Federally funded programs; funding through Vocational Rehabilitation intended to empower individuals with disabilities to participate in a broad range of activities

D. ADA (Americans with Disabilities Act) - 42 U.S.C. ' 12101 et seq.

no discrimination against individuals with disabilities on the basis of the disability

E. IDEA (Individuals with Disabilities Education Act) - 20 U.S.C. ' 1400 et seq.

children with disabilities are entitled to a free appropriate public education

F. ADEA (Age Discrimination in Employment Act) - 29 U.S.C. ' 621 et seq.

no discrimination in hiring, promoting, etc. based on age

G. PADD (Protection and Advocacy for the Developmentally Disabled) Act - 42 USC 15041 et seq.

provides for an entity to defend the rights of persons who are developmentally disabled

H. PAMII (Protection and Advocacy for Mentally Ill Individuals [or for Individuals with Mental Illness]) Act - 42 USC 10801 et seq.

provides for an entity to defend the rights of persons who have a mental illness

I. PAIR (Protection and Advocacy of Individual Rights) Act - 29 USC 794e et seq.

provides for an entity to defend the rights of persons with other disabilities.

J. Medicaid - 42 USC 1396a and 42 CFR 431.200 through .250 -

requires a fair hearing for any denial, reduction, suspension, and termination of Medicaid benefits; notice of rights must be provided at time of application for Medicaid; notice of any specific action must be provided at least 10 days before; all entities accepting Medicaid must permit review of records

III. State Statutes

A. G. S. 122C-21 through 31

licensure of mental health facilities; violations subject to fine and denial of further licensing for 5 years

B. G. S. 122C-52 through 56

confidentiality of mental health information and exceptions; violation is a misdemeanor 122C-52(e)

- C. G. S. 122C-60
restrictions on physical restraints or seclusion
- D. G. S. 122C-61 and 62
rights in 24-hour facilities
- E. G. S. 122C-66
prohibition of abuse and exploitation by staff or volunteers of any facility;
violation is a misdemeanor
- F. G. S. 122C-112.1
authorization of Secretary=s rules
- G. G.S. 122C-141
LMEs and contractors required to comply with State statutes and rules; Secretary
can delay or deny payment for failure to comply
- H. G.S. 122C-151.4
clients can appeal to the Area Program Appeals Panel certain matters regarding
the reduction in funding or the budgeting by the LME; procedure set out in 10A NCAC
27G.0808 through .0812
- I. G. S. 131D-21 and 131D-34
declaration of resident rights in adult care homes, assisted living residences, and
family care homes; provides for penalties for violations; notice of rights ###
- J. G. S. 143B-147
authorization of Commission=s rules

IV. State Rules

- A. 10A NCAC Chapters 27C, 27D, 27S, 27F, 27G, and 27H
govern the protection of client rights
- B. 10A NCAC 27C.0101
requires governing bodies of community providers to establish a process for
appeal of a planned use of restrictive intervention
- C. 10A NCAC 27D.0104
requires that every provider be reviewed at least once every three years for
compliance with 27C, 27D, 27E, and 27F
- D. 10A NCAC 27D.0201
requires that every client be advised of his/her rights under the NC statutes and
rules

E. 10A NCAC 27E.0104

facilities are to investigate any unusual or possibly unwarranted patterns of utilization of seclusion and restraint

F. 10A NCAC 27G.0504

requires area authorities to have client rights committees and have rules governing their actions, including establishment of a review procedure for any grievances or alleged violations of the law which may be brought by a client, client advocate, parent, legally responsible person, staff or others

G. 10A NCAC 27G.0606 and 27G.0607

requires area authorities to have a grievance policy and notify clients about it; .0607 sets out procedures for investigating grievances and the reporting requirements

H. 10A NCAC Chapter 28 - Rights in State-Operated Facilities

28A.0301 and .0304 require informing clients or their representative soon after admission of their rights and the facility policies

28B.0201 requires notice, directly and by posting, to clients of access to legal services

28B.0203 requires each facility to have a grievance policy with final decisions to be made by the facility director

28B.0204 allows the facility director's decision to be appealed to the Division Director; that decision can be appealed to the Office of Administrative Hearings pursuant to Article 3 of General Statute Chapter 150B

28B.0205 allows the decision of the Division Director to be appealed to the Secretary; that decision can be appealed to the Office of Administrative Hearings pursuant to Article 3 of General Statute Chapter 150B